APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI

No. 45,019

MASONITE CORPORATION

v.

INTERNATIONAL WOODWORKERS OF AMERICA, AFL-CIO, AND LOCAL 5-443, ET AL.

November 18, 1968

BRADY, *Justice*

This is an appeal by Masonite Corporation from a final decree of the Chancery Court of the Second Judicial District of Jones County dismissing with prejudice appellant's bill for injunction which would have made permanent a temporary injunction which had been issued on May 2, 1967, pursuant to a fiat dated May 1 issued by Justice Robertson of the Mississippi Supreme Court.

Masonite Corporation operates a large manufacturing plant in Laurel, Mississippi, which produces finished wood products for both inter and intra-state sale. On March 3, 1967, Local 5-443 of the International Woodworkers of America, AFL-CIO, executed with Masonite a collective bargaining agreement which provided for a five-step program for resolving grievances of employees against Masonite. The final step of this program was arbitration. In addition to Article 26 of the contract which provides for the adjustment procedure and for arbitration, Article 23 of the collective bargaining agreement provides what is commonly referred to as a "no strike" clause. Section 1 of Article 23 states:

> At no time, during the full term of this agreement, shall the Union or any of its members authorize or

engage in any strike, walkout or other type of work stoppage. At no time, during such term, shall the employer lock out any of its employees.

However, on April 21, 1967, the International and Local unions called a strike at the Masonite plant in Laurel. The appellees allege in their answer (1) that the Masonite Corporation had required employees to cross departmental lines in violation of the contract, (2) that Masonite had been neglectful in processing the grievances of the employees, and (3) that as a result of the actions of Masonite, which the Union contended amounted to unfair labor practices, the contract with the collective bargaining agreement had been breached by appellant and was not in full force and effect on that date. On April 21 or the day thereafter pickets appeared before the Masonite plant in Laurel; cars and people were prohibited from entering or leaving the plant; and signs appeared which stated "On strike, I. W. A., Local 5-443, AFL-CIO."

Violence attended the picketing. On the morning of April 24 as Mr. Paul, the general manager of the Mississippi operation, and a passenger, Mr. Lewis Carter, approached the plant, they found the entrance to the parking lot completely blocked by cars and people. The crowd converged on Mr. Paul's car and began to rock it, smashed the back window with a pipe, attempted to kick out the side windows, and struck the windshield, but failed to break it. Mr. Paul was prevented from entering the plant. On the evening of April 21 as Mr. Shows, a supervisory employee of Masonite, drove his car through the front gate, a part of the crowd surrounded his automobile and shook the car. When Safety Supervisor Green attempted to leave the plant on the same date by the wood yard exit, his car was rocked and damaged by the strikers. When Mr. Goodman, Maintenance and Engineering Manager, was leaving the plant, he was assaulted by one of the strikers.

On May 1, 1967, Masonite filed this bill for injunction in Cause Number 21,703 against the Union and the officers of the Union in the Chancery Court of Jones County. An injunction was issued pursuant to a fiat executed by Mississippi Supreme Court Justice Robertson on May 1, 1967, after Masonite filed a $5,000 bond with the clerk of the Chancery Court of Jones County. On May 2, 1967, the writ of injunction was served on all of the original defendants in Masonite Corporation v. International Woodworkers of America, AFL-CIO, etc., 206 So. 2d 171 (Miss. 1967), and was posted at two public places in Laurel as well as on the Masonite main gate entrance and at seven other locations around the plant. In spite of the injunction, although signs were taken down, strikers and other persons continued to stand across the street from Masonite and at other entrances to the plant at regular four hour intervals, keeping a surveillance of the property and noting the people who went in and out of the Masonite Corporation grounds. On May 4, 1967, Masonite, through Mr. Paul, its General Manager, filed contempt charges against the International, the Local, the five officers who signed the collective bargaining agreement, and eighty individual defendants of the local union. In the contempt case, Masonite Corporation v. International Woodworkers of America, AFL-CIO, etc., *supra,* the Mississippi Supreme Court reviewed the acquittal in the lower court of the defendants and upheld the acquittal on charges of criminal contempt; however, we held that the evidence did establish that the Union and its officials who signed the collective bargaining agreement containing "no strike" provisions were guilty of civil contempt, but that it did not establish that stewards and committeemen were guilty of such contempt. It was held that the constant surveillance of the plant at all gates by silent pickets day and night constituted a violation of the temporary injunction against continuing such picketing.

Although not essential to the determination of the issues involved in the case at bar, it is to be noted that in addition to this cause the appellant on April 25, 1967, filed a suit for damages for breach of contract in the United States District Court, Southern Division, Hattiesburg, Mississippi, Civil Action No. 2183, which is now pending.

In passing, it should also be noted that prior to May 1, 1967, the date of the filing of the bill for injunction by appellant, Masonite Corporation, in the case at bar, a former bill for injunction, Cause No. 21,693, had been filed in the Chancery Court of Jones County. The bill for injunction in Cause No. 21,693 was based upon the prohibiting of ingress and egress of employees to the plant of appellant by the strikers and the violence being perpetrated by the strikers. The chancellor suggested the consolidation of the first bill for injunction and the case at bar, which the appellees opposed. Trial proceeded on Cause No. 21,703, the case at bar.

The present case came on to be heard on the petition of Masonite which would make permanent the temporary injunction that had been issued on May 2. On June 22, 1967, after hearing the evidence and oral arguments which had been presented, the chancellor dismissed with prejudice the petition for the injunction. Appellant then filed a petition for temporary injunction pending an appeal from the Chancery Court of the Second District of Jones County. This petition was overruled by Justice Gillespie, Presiding Justice of the Mississippi Supreme Court, on July 10, 1967, and subsequent thereto, on July 11, 1967, simultaneously with the filing of Justice Gillespie's denial of a temporary injunction, a petition for writ of supersedeas was filed by appellant in the Chancery Court of Jones County. The chancellor overruled the petition for the writ of supersedeas on July 21, 1967. Thereafter, on July 24, 1967, an application for the issuance of a writ of supersedeas was presented to Justice Ethridge, Chief

Justice of the Mississippi Supreme Court, who granted it conditioned on the execution of a bond in the sum of $25,000. Thus the case at bar is presented to us.

It appears from the record, briefs of counsel and from oral arguments made by counsel, that on May 29, 1967, the appellee, and that subsequently the appellant, filed complaints with the Regional Director of the National Labor Relations Board in New Orleans. On July 1, 1967, the Regional Director of the National Labor Relations Board informed the parties that he would not file any complaint based upon the charges made by the Union of unfair labor practices on the part of Masonite Corporation.

The first question which must be decided is: Does a state court have jurisdiction to hear a case where unfair labor practices are alleged to have been committed in violation of a collective bargaining contract or has the field been preempted by either the federal courts, under Section 301 of the Labor-Management Relations Act, 29 U.S.C.A. § 185(a) (1964), or by the National Labor Relations Board, under the National Labor Relations Act? Section 301 provides:

> Suits by and against labor organizations—Venue, amount and citizenship
>
> (a) Suits for violation of contracts between an employer and a labor organization representing employes in an industry affecting commerce as defined in this chapter, or between any such labor organizations, *may be brought* in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. (Emphasis added.)

This section has been interpreted by the United States Supreme Court and by various state courts as giving federal courts only concurrent jurisdiction with state

courts over cases involving the violation of labor contracts.

In Charles Dowd Box Company v. Courtney, 368 U.S. 502, 82 S. Ct. 519, 7 L.Ed.2d 483 (1962), the sole question ruled on was whether Section 301 operated to divest a state court of jurisdiction in a suit for violation of a contract between a labor organization and an employer. The United States Supreme Court held that there is nothing in Section 301 which tends to deprive a party to a collective bargaining agreement of the right to seek redress in appropriate state courts. Section 301 does not state or even suggest that its purpose is to give federal courts exclusive jurisdiction. State courts may enforce federally created rights, and exclusive federal jurisdiction must be clearly shown. The clear implication from the entire record of the congressional debates surrounding Section 301 and the entire judicial history of that section leads to the inescapable conculsion that the Congress did not intend that Section 301 was to displace state court jurisdiction, but rather to expand the jurisdiction under that section to include federal courts. The Supreme Court of the United States in the Dowd Box case, *supra*, speaking through Justice Stewart, stated:

> The legislative history makes it clear that the basic purpose of § 301(a) was not to limit, but to expand, the availability forums for the enforcement of contracts made by labor organizations. (368 U.S. at 508, 82 S. Ct. at 523.)

It is conceded that the earlier cases of San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S. Ct. 733, 3 L.Ed.2d 775 (1959), and Guss v. Utah Labor Relations Board, 353 U.S. 1, 77 S. Ct. 598, 609, 1 L.Ed.2d 601 (1957), carry the implication that the Supreme Court of the United States looked with favor upon the propo-

sition that the passage of the National Labor Relations Act, which instituted the National Labor Relations Board, preempted state as well as federal court jurisdiction where the conduct of the Union constituted an unfair labor practice under Section 8 or where the activity was arguably subject to Section 7 or 8 of that Act. This nebulous concept is dispelled for the reason that the preemptive doctrine has been clearly rejected in subsequent cases where the alleged conduct of the employer was not only arguably, but was concededly, an unfair labor practice within the jurisdiction of the National Labor Relations Board. Smith v. Evening News Ass'n, 371 U.S. 195, 83 S. Ct. 267, 268, 9 L.Ed.2d 246 (1962). The Supreme Court of the United States specifically refused to apply the preemptive doctrine of the Garmon case in Smith v. Evening News Association, *supra.* The Court likewise refused to apply the preemption doctrine of Garmon in Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers v. Lucas Flour Company, 369 U.S. 95, 82 S. Ct. 571, 7 L.Ed.2d 593 (1962) and in Atkinson v. Sinclair Refining Company, 370 U.S. 238, 82 S. Ct. 1318, 8 L.Ed.2d 462 (1962). The Fifth Circuit Court of Appeals in National Labor Relations Board v. George E. Lightboat Storage, Inc., 373 F.2d 762 (5th Cir. 1967), stated:

> Where the act of the employer constitutes both an unfair labor practice and a breach of contract, both the courts and the Board have jurisdiction to remedy the wrong. Smith v. Evening News Ass'n, 1962, 371 U.S. 195, 83 Sup. Ct. 267, 9 L.Ed.2d 246. (373 F.2d at 767.)

The case at bar falls squarely within the decisions in the George E. Lightboat Storage and Evening News Association cases, *supra.*

In addition, on July 1, 1967, the parties to the case at bar were notified by the Regional Director of the

National Labor Relations Board that he had refused to file a complaint upon the charges made by the Union of unfair labor practices on the part of Masonite.

The United States Supreme Court in the Dowd Box case, *supra*, concluded that the legislative history of Section 301 establishes the fact that a provision making a breach of a collective bargaining agreement an unfair labor practice under the jurisdiction of the National Labor Relations Board was contemplated by Congress and rejected. The conference report thereon stated: "Once parties have made a collective bargaining contract the enforcement of that contract *should be left to the usual processes of the law* and not to the National Labor Relations Board. 'H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 42.'" (Emphasis added.) 368 U.S. 511, 82 S. Ct. at 524.

The second question presented for our consideration is whether the anti-injunctive provision of the Norris-LaGuardia Act is applicable to state courts. Section 4 of the Norris-LaGuardia Act, 29 U.S.C.A. section 104 (1965), provides in part as follows:

> *No court of the United States* shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment . . . (Emphasis added.)

Both the United States Supreme Court and the Mississippi Supreme Court have declined to rule on the question of whether the remedies available in state courts in cases involving breach of collective bargaining agreements are limited to the remedies available under federal law.

Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists and Aerospace Workers, 88 S. Ct. 1235, 20 L.Ed. 2d 126 (1968), and Masonite Corp. v. Local 5-443, IWA, 206 So.2d 171 (Miss. 1967).

It is significant that the Norris-LaGuardia Act refers only to "court of the United States." Section 13(d) of that act defines the term "court of the United States" as "any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia." It is indisputable from the precise language of the Act itself that the congressional intent was to restrict the operation of the Norris-LaGuardia Act solely to the federal courts, including courts of the District of Columbia. 29 U.S.C.A., § 113(d) (1965). There is no provision in Section 301 of the Labor-Management Relations Act which expressly requires a state court to apply Section 4 of the Norris-LaGuardia Act so as to withhold injunctive relief. To the contrary, to so construe Section 301 would be in direct conflict with specific congressional intent to supplement by the passage of Section 301 the existing jurisdiction of state courts. Section 301 does not abolish equitable remedies which have been available in state courts. Justice Traynor of the California Supreme Court in McCarroll v. Los Angeles County District Council of Carpenters, 49 Cal.2d 45, 315 P.2d 322 (1957), certiorari denied 355 U.S. 932, 78 S. Ct. 413, 2 L.Ed.2d 415 (1958), expressly stated:

> The restriction on the remedies available in the federal courts arises not from any policy in the Labor Management Relations Act itself but from the Norris-LaGuardia Act, and the policy of that statute as we have seen is confined to the federal courts. (49 Cal.2d at 64, 315 P.2d at 332.)

Numerous state courts have sustained their jurisdictional rights to utilize an injunction against strikes and picketing in breach of collective bargaining agreements.

Lion Oil Co. v. Marsh, 220 Ark. 678, 249 S.W.2d 569 (1952); Radio Corp. of America v. Local 780, etc., 160 So.2d 150 (Fla. Dist. Ct. App. 1964); *cert. denied* 380 U.S. 973, 85 S. Ct. 1335, 14 L.Ed.2d 269 (1965); Dugdale Constr. Co. v. Local 538, Operative Plasterers and Cement Masons Int'l Ass'n, 257 Iowa 997, 135 N.W.2d 656 (1965); Armco Steel Corp. v. Perkins, 411 S.W.2d 935 (Ken. 1967); Rust Eng'r Co. v. United Bhd. of Carpenters and Joiners, etc., 210 So.2d 154 (La. Ct. App. 1968); Anchor Motor Freight Corp. v. Local 445, Teamsters, 171 N.Y.S.2d 506 (1958), affirmed 171 N.Y.S. 2d 511 (App. Div. 1958); General Elec. Co. v. Int'l Union United Automobile, etc., 93 Ohio App. 139, 108 N.E.2d 211 (1952); Shaw Elec. Co. v. Local 98, Int'l Bros. Elec. Workers, 418 Pa. 1, 208 A.2d 769 (1965); Local 129, Office Employees Int'l Union v. Houston Lighting and Power Co., 314 S.W.2d 315 (Tex. Ct. Civ. App. 1958); and Associated Gen. Contractors, etc. v. Trout, 59 Wn.2d 90, 366 P.2d 16 (1961). The United States Supreme Court in the Avco case, *supra*, upheld the Sixth Circuit decision in Avco, 376 F.2d 337 (6th Cir. 1967) and overturned that portion of American Dredging Company v. Local 25, Marine Division, etc., 338 F.2d 837 (3rd Cir. 1964), which had held that a Pennsylvania court action under Pennsylvania law to enjoin a Union's violation of no-strike provisions of the contract was not one in which a federal court had subject matter jurisdiction within the original jurisdiction provision of the removal statute. In that case the court held that the complaint did not show that the controversy was arising under federal law or constitution. The American Dredging case also held that the anti-injunctive provisions of the Norris-LaGuardia Act had no application to state court actions. The United States Supreme Court in Avco decided the case on the question of removal but specifically refused to settle the dispute which exists between the Sixth Circuit in the Avco case and the Third Circuit in the

American Dredging Company case over the applicability of the Norris-LaGuardia Act to state courts. The Supreme Court had an excellent opportunity in Avco to uphold the contention of the Sixth Circuit Court of Appeals that the respective states have been preempted of their authority to grant injunctive equitable relief in labor contract disputes. The logical conclusion to be drawn from their declination to make such a ruling is that they did not intend to deprive the states of remedial injunctive relief which existed at that time. It declined to do that which Congress had refused to do in the passage of Section 301. We are led to the conclusion that the rule of law under consideration in the American Dredging Company case was not overruled as to the question of the inapplicability of the Norris-LaGuardia Act to the state court. The court in American Dredging states that there is nothing in the Act itself or in its legislative history to indicate that it should be applied to the state and that in fact it explicitly states that it applies only to courts of the United States. We fail to find any case except the Sixth Circuit decision in Avco which holds that the limitations of Section 4 of the Norris-LaGuardia Act extends to the states.

Because of the legislative history and the purposes of the Norris-LaGuardia Act and of Section 301 of the Labor-Management Relations Act, the repeated refusal of the Supreme Court for over a decade to specifically rule on the question and negate congressional intent, and to also overrule the overwhelming weight of authority in the various states which allow injunctive relief in labor disputes growing out of violations of collective bargaining agreements, we cannot agree that the broad general request for uniformity under Section 301, as set out in Local 174, Teamsters v. Lucas Flour Company, 369 U.S. 95, 82 S. Ct. 571, 7 L.Ed.2d 593 (1962), and Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 457, 77 S. Ct. 912, 1 L.Ed. 2d 972 (1957), transcends

and takes from the state courts the equitable remedy of the injunction.

Appellees urge a hypothetical syllogism as proof that the trial court was correct in denying the injunctive relief. The major premise in appellees' syllogism is that because of the Norris-LaGuardia Act federal courts are without power to enjoin strikes in spite of remedial latitude permissible under Section 301 of the National Labor Relations Act. The minor premise apparently is that under Section 301 of the Labor-Management Relations Act the state forum cannot, because of the importance of uniformity, grant injunctive relief. Therefore, in the case at bar, the State of Mississippi is without power to issue the injunction. The fallacy in this argument lies in the minor premise. As we have shown herein under Section 301 of the Labor-Management Relations Act, the States have not been precluded from granting injunctive relief. As to the importance of uniformity, we are not persuaded that there is in uniformity intrinsic worth. Uniformity seeks to press into a common mold the natural, evolutionary concepts and interpretations of state and federal law as is evident in the diversity of interpretation of laws dominant in the United States District and Circuit Courts of Appeal. Uniformity, when carried to its ultimate, produces a stereotyped sterility in the interpretation of state and federal laws, the quintessence of which is classically exhibited by the absolute congruity of Soviet jurisprudence. The question immediately presented is: Why in the field of labor relations should uniformity be sought as a panacea for maladjustments while in all other fields of law, both state and federal, there has been, under varying facts, a pristine divergence of interpretation and application of state and federal laws which represents a healthy, normal condition of development rather than a malady, as implied by appellees, which requires immediate judicial therapy? Moreover, while logic has its place in law and in numerous other realms of

human self-regulation, nevertheless hypothetical, syllogistic conclusions are not the prudent, judicious means whereby a fair and just interpretation of the law has been and can be determined. Injunctive relief for the enforcement of contracts is available in Mississippi. Frierson v. Sheppard Bldg. Supply Co., 247 Miss. 157, 154 So.2d 151 (1963); Redd Pest Control Co. v. Heatherly, 248 Miss. 34, 157 So.2d 133 (1963); Stephenson v. New Orleans & N. E. R. R., 180 Miss. 147, 177 So. 509 (1937); and Mississippi Theatres Corp. v. Hattiesburg Local Union No. 615, 174 Miss. 439, 164 So. 887 (1936).

It should also specifically be noted that threats and violence attended the strike at Masonite. In the Sixth Circuit case of Avco there was no allegation of violence connected with the strike. In that case the court stated that there was no violence involved and ". . . hence no foundation for the employment of state injunctive power under the police power doctrine." 376 F.2d at 339. Mississippi has long recognized the doctrine that even in the absence of a collective bargaining agreement where force and violence attend a strike the court may issue an injunction. United Bhd. of Carpenters, etc. v. Pascagoula Veneer Co., 228 Miss. 799, 89 So.2d 711 (1956); and Southern Bus Lines v. Amalgamated Ass'n of St., Elec. Ry, etc., 205 Miss. 354, 38 So.2d 765 (1949). While peaceful picketing (in the absence of a collective bargaining agreement) is lawful, nevertheless when the brutal hand of violence and dire threats attend a strike, there is no doubt that the State of Mississippi and the other states have the authority under their police power to grant an injunction to protect property and the lives of persons of the state.

Neither does the Norris-LaGuardia Act, 29 U.S.C.A., Sec. 101 et seq., nor the National Labor Relations Act, 29 U.S.C.A., Sec. 151 et seq., prohibit the institution by either party involved in a controversy of this character, of proceedings in a state court; nor

> do they place exclusive jurisdiction in federal courts. The Norris-LaGuardia Act curtailed only the equity jurisdiction of the federal courts in the field of labor disputes, and has no application to the equity courts of the state. . . . The National Labor Relations Act does not preempt all state control, nor more specifically the state police power. . . . The state and federal courts have concurrent jurisdiction of suits of a civil nature arising under the Constitution and laws of the United States, save in exceptional instances where the jurisdiction has been restricted by Congress to the federal courts (205 Miss. at 378, 379, 38 So.2d at 770).

The final question raised by this appeal is: Were the acts done and the threats made to non-striking Masonite employees by unidentified picketers admissible? Some of this testimony was excluded by the trial court. The appellant contends that such evidence should be admissible as part of the res gestae and to show the quo animo of the crowd. The Mississippi Court in Starks v. State, 245 Miss. 238, 147 So.2d 503 (1962), adopted the rule expressed in 32 C.J.S., Evidence, § 403 at 21-22, which is now 31A C.J.S., Evidence, § 403 (1) at 982-3 (1964), which provides:

> No hard and fast rule can be laid down as to the admissibility of evidence as a part of the res gestae. The facts and circumstances presented in different cases vary so widely that the courts have come to the point of adjudging this question as it is presented by the particular case under consideration; and the admissibility vel non of evidence as part of the res gestae is a matter resting very largely in the discretion of the trial court (245 Miss. at 243, 147 So. 2d at 505).

The cardinal issue involved here relates to picketing in furtherance of a strike. The record discloses that por-

tions of the testimony bearing upon the acts of the persons participating in the picketing were in fact admitted in the case. The nature of the picketing, whether peaceful or violent, is equivocal and most important in this case.

We are not considering testimony offered by appellant which the trial court excluded relating to threatening telephone calls by unidentified persons, shooting into the homes of managers or pursuing employees when returning in automobiles to their homes. The testimony we do consider is that which was attempted to be introduced by the appellant relating to the main fact of picketing and attempting to explain its true nature. The statements were made during the turmoil by persons who were actually engaged in the picketing to persons who were actually present at the time. These were spontaneous, emotional, acerbated utterances which clearly revealed the present emotional and mental state of the crowd. It was held in Hart Cotton Mills v. Abrams, 57 S.E.2d 803, 26 L.R.R.M. 2034 (N. C. 1950), that where people acted in concert during a strike a witness could testify as to "booing" and "singing" as part of the res gestae and to show the quo animo of the crowd. Statements of unidentified witnesses may be admitted as part of the res gestae. Powers v. Temple, 156 S.E.2d 759 (S. C. 1967).

In the case at bar a unique situation is presented. Appellant employs approximately 2,000 men and it is practically impossible and unreasonable to expect and require members of appellant's management to know all of the union members, or their names. To exclude evidence of the actual picketing for this reason constitutes error.

At the time the astute chancellor, in overruling the writ for supersedeas, ruled that under Avco the states were divested of their jurisdiction because of the interpretation

placed upon the operation of Section 301 and the injunctive prohibition under the Norris-LaGuardia Act, he had only the decision of the Sixth Circuit Court of Appeals of May 2, 1967, which at that time he interpreted to be preemptive insofar as the state's authority in the case at bar is concerned. This finding based upon the Sixth Circuit Avco decision is erroneous because the Supreme Court of the United States in 1968 in the Avco case specifically declined to hold that the states were precluded under Section 4 of the Norris-LaGuardia Act from issuing injunctions in labor disputes involving the violation of collective bargaining agreements. The United States Supreme Court had an excellent opportunity to affirm the findings of the Sixth Circuit Court of Appeals and another opportunity to hold that in actions arising under Section 301 of the Labor-Management Relations Act, that Section 4 of the Norris-LaGuardia Act preempted state courts from any proceedings therein. In lieu thereof the Supreme Court held as follows:

> We find it unnecessary to rule on the holding of the Court of Appeals below that "the remedies available in state courts are limited to the remedies available under Federal law." 376 F. 2d at 343. That conclusion would suggest that state courts are precluded by § 4 of the Norris-LaGuardia Act from issuing injunctions in labor disputes even though the defendant does not exercise his right—which we confirm today—to remove the case to the District Court under 28 U.S.C., § 1441(b), and the state court therefore retains jurisdiction over the action. We have no occasion to resolve that matter here, since respondent did elect to have the case removed. (88 S. Ct. at 1237.)

The only reasonable inference to be drawn therefrom is that the Supreme Court would not by its decision interpret an act of Congress in order to accomplish that which Congress itself refused to do.

In conclusion, we decline now to do that which the Congress refused to do and change the permissive form of the verb "may be brought" in any court of the United States under Section 301 of the Labor-Management Relations Act to the mandatory implication "shall be brought" in any court of the United States, in distinct violation of the Congressional intent as reflected in the debates and as construed by the United States Supreme Court. Furthermore, it would ill become this Court to foolishly rush in where the Justices of the United States Supreme Court declined to tread, and hold that under the suggestion of uniformity of Section 301 state courts in labor disputes are required to follow the anti-injunction provision of the Norris-LaGuardia Act since it is clearly stated in the Act and from the history of that Act that it was intended for application only to federal courts.

Though many practical problems presented by this cause have been resolved, the cause itself is far from moot since the appellant is still answerable under its bonds in the sum of $30,000.

From the foregoing we hold that the trial court erred in dismissing the temporary injunction, which is by this opinion made permanent but limited only to the term of the collective bargaining agreement entered into on March 3, 1967, by the parties thereto.

REVERSED AND JUDGMENT ENTERED HERE FOR APPELLANT.

ALL JUSTICES CONCUR.

JUDGMENT

This cause having been submitted at a former day of this Term on the record herein from the Chancery Court of Jones County, Second District, and this Court having

sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge and decree that the decree of said Chancery Court rendered in this cause on the 22nd day of June 1967—be and the same is hereby reversed and judgment is entered here for the appellant. It is therefore ordered, adjudged and decreed that the decree of the trial court dismissing the temporary injunction is reversed and said temporary injunction is made permanent but limited only to the term of the collective bargaining agreement entered into on March 3, 1967, by the parties thereto. It is further ordered, adjudged and decreed that the appellant do have and recover of and from the appellees all of the costs of this appeal and in the Court below to be taxed, for which let proper process issue.

APPENDIX B

IN THE CHANCERY COURT OF THE SECOND JUDICIAL DISTRICT OF JONES COUNTY, MISSISSIPPI

No. 21,703

MASONITE CORPORATION — *Complainant*

v.

INTERNATIONAL WOODWORKERS OF AMERICA, ET AL. — *Defendants*

June 26, 1967

CLARK, *Chancellor*:

This matter is now before the Court on a petition for both a temporary and permanent injunction in Cause No. 21,703 in which the Masonite Corporation, as Complainant, seeks a permanent injunction against the International Woodworkers of America and Local 5-443, and J. D. Jolly, Chester Ishee, John A. West, Ben Johnson and Thomas E. Lindsey, as Defendants, enjoining all of the defendants and any and all other persons acting under their persuasion, influence or inducement and in concert with them to be restrained and enjoined from engaging in a strike at the complainant's plant in Laurel, Mississippi, and from inducing or causing complainant's employees to strike, and from engaging in picketing, and that the Court will further order the defendants to take the following affirmative action forthwith: That is, to advise all of their officers, agents or employees and all other persons acting in concert with them of the contents of the Court's order, and that the work stoppage at the complainant's mill has been ended and to direct each of their officers, agents, representatives and members employed by the complainant immediately to cease participating in a work stoppage

and to return to work at their next scheduled working time.

Subsequent to the filing of the bill of complaint on May 1, 1967, an injunction was issued by S. W. Robertson, Jr., Judge of the Supreme Court, ordering the defendants to do and perform those acts. Thereafter a contempt proceeding was had in this court and that contempt proceeding is now on appeal to the state Supreme Court.

The defendants and each of them have filed an answer denying all of the essential allegations of the bill of complaint, alleging that the complainant is in violation and breach of said contract by committing unfair labor practices, not of an economic nature, and further alleging as an affirmative defense that the complainant has an adequate remedy at law, and alleging as defenses that such an injunction would be in violation of the First, fifth, thirteenth and fourteenth amendments to the Constitution of the United States, and the Eleventh, Thirteenth Fourteenth and Fifteenth Sections of the Constitution of the State of Mississippi, and further, as a defense, that the subject matter of this suit has been preempted by the National Labor Relations act, and further as a defense that this same subject matter of this suit is pending in Cause No. 21,693 on the docket of the Chancery Court of the Second District of Jones County, and that the complainant has recognized the exclusive jurisdiction of the National Labor Board by filing unfair labor practices against the Defendant, and that the matter is now moot insofar as it pertains to the defendants' taking affirmative action with regard to advising that the work stoppage is over, and that the temporary injunction was issued in violation of Rule 32 of the Supreme Court of the State of Mississippi. No response has been filed to that answer.

By way of background to this case, a similar suit was filed in Cause No. 21,693 on the docket of this court and

there is now pending and in effect a temporary injunction enjoining these same defendants, their officers, agents, representatives, employees and members, and all other persons acting in concert with them or under their control, influence, persuasion or inducement from interfering with ingress to or egress from the complainant's premises, and from interfering in any manner with any person or persons desiring to enter or leave or remain on the complainant's premises, and from blocking or obstructing the streets or roadways leading to the complainant's premises, and from congregating in and about the streets and roadways leading to the complainant's premises, and further, from hindering or interfering in any way with the lawful activities of the complainant's officers, agents, employees or with other persons seeking to provide service for the complainant or persons seeking to do business with the complainant, and further from threatening to injure or injuring at or away from the complainant's premises any officers, agents or employees of the complainant, or any other persons having business with the complainant, or seeking to do business with the complainant, or any persons desiring to enter or leave or remain on the complainant's premises, and further from threatening to damage or in any way damaging property at or away from the complainant's premises belonging to the complainant, or to any of the complainant's officers, agents, employees or other persons seeking to provide service for the complainant or seeking to do business with the complainant or doing business with the complainant.

That injunction is not in dispute in this case and, as the Court recalls the announcement of counsel at a prior hearing on this that there was no objection on the part of anyone to the issuance of that injunction. It remains in full force and effect.

No relief is sought in this particular case in regard to any such injunction by either side.

The proof, as shown from the testimony of Mr. Paul in this case, that the plant involved in this dispute is now operating and that there [are] approximately 950 to 1,000 employees daily entering the plant and that, according to Mr. Paul's testimony, the approximate current production of the plant is 1,800,000 square feet per day of board; that prior to April 21 it was 2.4 million square feet of board. The testimony of other witnesses varied in this regard, some of which has been that the plant is producing more now than it was before April 21. The testimony of the general manager is that the plant is now shipping approximately 2.3 million square feet of board per day and that before April 21 the average daily shipping was approximately 2 million square feet per day.

From the record it appears that the complainant takes the position that all of those employees other than those who are sick who have not returned to work have been terminated, and according to the testimony of the officers of the complainant, they are no longer considered employees of the company. So it would appear to this Court that the question of entering any order requiring persons to return to work or requiring the defendants to advise persons to return to work, since this Court or no other court can order a person to work, would now be moot for the simple reason that this Court or no other court can order anyone to advise anyone to return to work who is not considered an employee by the complainant. As the Court recalls Mr. Paul's testimony, he said that insofar as he was concerned, and he is the general manager and chief officer in charge of the plant at Laurel, Mississippi, or, as they refer to it, the Mississippi operation, that the work stoppage was over at the plant and that all persons who are not at work at the present time are not considered employees of the complainant. So the question, insofar as this Court is concerned, narrows to a single issue, and that is that of peaceful picketing of the plant in question. There is no question in this proceeding about mass

picketing, about violence, about interfering with the ingress or egress to and from the premises for the simple reason that that is covered by another injunction issued out of this court on the 24th day of April, 1967. That injunction remains in full force and effect and no contest has been made of its validity, and, in fact, the attorneys for the defendant have stated in another proceeding that they had no objections to it. As the Court earlier stated, the question of ordering the defendants to advise those persons who are not now at work to return to work is moot insofar as this Court is concerned because the complainant, whether rightfully or wrongfully, has said that they consider those persons no longer employees and have ordered them discharged or terminated.

The question of the right to picket—to peacefully picket, goes back to the question of the legality or not of the strike. It is the complainant's contention that it is an illegal strike, the defendants' contention that it is a legal strike. At an earlier hearing on identically this same issue, this Court, after a full and complete hearing, rendered an opinion in which this Court concluded that this area of the labor law has been pre[e]mpted by the National Labor Relations Act and that this Court did not have jurisdiction to decide the unfair labor practices alleged, and as a result, could not adjudicate the issues before it. Since that time the Court has studied in detail all of the cases submitted to it at that time and since that time.

This particular problem originates out of the decision of the U. S. Supreme Court decided in 1955 and styled Mastro Plastics Corporation v. National Labor Relations Board (3[5]0 U. S. 270). In that particular case there was involved the question of whether or not a collective bargaining agreement waives the employees' right to strike against unfair labor practices committed by their employer. In that case there was involved a collective bargaining agreement which contained a clause very similar

to the clause in this case, which is commonly referred to as a "no strike" clause, which reads as follows: "The union further agrees to refrain from engaging in any strike or work stoppage during the terms of this agreement." In that case the National Labor Relations Board had concluded that a strike in violation of that clause of the contract was not an illegal strike but was a legal strike because it had been a strike for unfair labor practices and not an economic strike. This same rule has been set forth in other cases, or should I say, has been cited in other cases, and so far as this Court has been able to determine, the Mastro Plastics Corporation case has not been overruled. The contention is made, and there seems to be authority for that in the later cases, that the Mastro Plastics Corporation case only applies in the case of a "flagrant" unfair labor practice. The contention that some of these other cases do not apply because of the fact that they do not involve contracts of collective bargaining agreements do not apply to the Mastro Plastics Corporation case because it involves an agreement substantially the same as the agreement in effect in the present case. No authority has been cited [to] this Court nor has the Court found any authority overruling that case or to the effect that under certain circumstances a party to the collective bargaining agreement would not have the right to strike for unfair labor practices. To this Court it is a question of whether it is a flagrant unfair labor practice or not and begs the question as to what has to be decided by the Court. It must first be decided whether or not it is an unfair labor practice before you can go to the question of whether it is a "flagrant" unfair labor practice or not.

As the Court then understands the issue, in order to determine whether or not it is a legal or an illegal strike, this Court must first determine whether or not the complainant has been guilty of unfair labor practices. That

is the difficulty that this Court then runs into because the National Labor Relations Board has been designated by the Congress to decide this issue. Both sides admit to the Court that any decision by this Court as to whether or not the complainant has been guilty of an unfair labor practice would not be binding on the National Labor Relations Board, and in this and in former hearings no one has contended that this Court has authority to make such a decision as would be binding on the National Labor Relations Board.

In San Diego Bldg. Trades Council v. Garmon, the first case on the subject, in 359 US 236—I say the first case on the subject—the first case that raised this particular question in detail, the Supreme Court, as I read the case, decided that the question of whether or not unfair labor practices may be regulated by the state, that that issue had been pre[e]mpted by the National Labor Relations Act. I quote the United States Supreme Court as follows: "When it is clear, or may fairly be assumed that the activities which a state purports to regulate are protected by Section 7 of the National Labor Relations Act, or constitute an unfair labor practice under Section 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the states free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress in requirements imposed by state law. Now has it mattered whether the states have acted through laws of broad general application rather than laws specifically directed toward the [government] of industrial relations. Regardless of the mode adopted to allow the states to control, which is the subject of national regulation, would create potential frustration of national purposes. At times it has not been clear whether the particular activity regulated by the states was governed by Section 7 or Section 8 or was perhaps outside

both these sections, but courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board."

Again I quote from that opinion: "In the light of these princip[le]s, the case before us is clear, since the National Labor Relations Board has not adjudicated the status of the conduct for which the State of California seeks to give a remedy in damages, and since such activity is arguably within the compass of Section 7 or Section 8 of the Act, the state's jurisdiction is displaced."

Thereafter, in other cases, the Supreme Court of the United States seemed to limit that opinion in numerous regards, that is, particularly the Lucas Flour cases, Charles Dowd Box Company v. Courtney, and Smith v. Ev[e]ning News Association. However, this Court has not been able to find any particular case which involves indentically the same problem as is here involved. The evidence has shown that both sides have accepted the theory that the National Labor Relations Board has jurisdiction of many of the matters now before the Court in that both sides have filed unfair labor practice complaints, the company against the union and the union against the company, arising out of this controversy.

The Court of Civil Appeals of Texas in the case of Office Employees International Union, Local No. 129, vs. Houston Lighting and Power Company set forth the rule as follows: "We held in the case of Dallas General Drivers, W rehousemen and Helpers v. Wamix, Inc. that when a suit seeking injunctive relief against labor practices is filed in a state court, that court will be held to have jurisdiction unless the evidence shows that, one, the activity is one coming within the area covered by the Labor Management Relations Act, and, two, the business is one affecting interstate commerce." Again I quote: "The state court

should decline jurisdiction in the first instance if the plaintiff, as they did her[e], plead unfair labor practice acts, reasonably bringing the controversy within sections of Taft-Hartley prohibiting those practices, and where the conduct, if not prohibited by the federal act, may be reasonably deemed to come within the effect afforded by the Act."

In a Florida case the opposite result was reached. That was the case of Radio Corporation of America vs. Local 780 (160 So. 2nd 150). After an exhaustive discussion of numerous cases the Florida Supreme Court reached an opposite result, but their opinion contains this language: "From our study and research the precise question presently before the Court has not been adjudicated by the Supreme Court of the United States."

On the face of it, Smith vs. Evening News Association (371 U.S. 195), might appear to reach an opposite result. Yet, as I quoted in my former opinion, Justice White said: "If, as respondent strongly urges, there are situations in which serious problems will arise from both the courts and the board having jurisdiction over acts which amount to an unfair labor practice, we shall face those cases when they arise. This is not one of them, in our view, and the National Labor Relations Board is in accord."

As I said previously, this is a case in which I believe and it is the Court's opinion that a serious question and a serious situation would arise from this Court exercising and adjudicating an unfair labor practice when the same issue is pending before the National Labor Relations Board. The Court can evision that this Court could here adjudge that this was an illegal strike and the National Labor Relations Board then adjudge that it is a legal strike and order reinstatement of personnel or whatever other relief they may grant. In this Court's opinion, saying that it was an illegal strike would be in complete

variance with the National Labor Relations Board, and in the same instance, if there were another result to be reached, the federal court in the suit now pending might reach another result. To do so would leave the situation in this Court's opinion in a ridiculous position of this Court enjoining what the National Labor Relations Board, the agency set up by the Congress to determine these issues, might say is legal.

No authorities have been submitted to this Court which would require or influence this Court in altering its former opinion in regard to this same matter.

This Court is, therefore, of the opinion that it does not have jurisdiction of this suit, which again I state that not in any manner affects the other injunction, which is in effect, and for that reason the bill of complaint will be dismissed.

Final Decree

June 22, 1967

Came on this cause to be heard at the regular June, A. D., 1967, term of this Court on the Bill of Injunction of the complainant and Answer of the Defendants, the Complainant and Defendants being present in open court and being represented by counsel and the Court having received evidence, both oral and documentary, and the Court having considered same and having heard argument of counsel is of the opinion that the Bill of Complaint should be dismissed with prejudice, and the complainant take nothing by its suit.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Bill of Complaint of Masonite Corporation for injunction be, and the same is hereby dismissed with prejudice and complainant take nothing by its suit.

APPENDIX C

IN THE CHANCERY COURT OF THE SECOND JUDICIAL DISTRICT OF JONES COUNTY, MISSISSIPPI

No. 21,703

MASONITE CORPORATION — *Complainant*

v.

INTERNATIONAL WOODWORKERS OF AMERICA, ET AL. — *Defendants*

July 24, 1967

CLARK, *Chancellor*:

This matter came before the Court on the application of Masonite Corporation for a writ of supersedeas pending an appeal of this case from the final decree of this court dated June 22, 1967. A final decree of this Court was entered on that date dismissing the original bill of complaint in this cause. Thereafter, during term time, an appeal was taken to the Supreme Court of the State of Mississippi by Masonite Corporation by the filing of an appeal bond under the provisions of Section 1162 of the Mississippi Code, which provides as follows:

> "Where the appellant shall not desire a supersedeas, it shall be sufficient if the appellant give bond to the opposing party with two or more sufficient resident sureties, or one or more guaranty or surety companies authorized to do business in this state, in the penalty of $500.00."

This appeal bond has been filed. Therefore, the appellant, Masonite Corporation, filed an original bill in the Supreme Court of the State of Mississippi for an injunc-

tion pending the appeal. Now the appellant comes back to this Court and makes application for a supersedeas, which the Supreme Court has indicated would keep the temporary injunction in full force and effect pending the appeal.

This Court deems it necessary, in accordance with its original opinions, to deny the application for a writ of supersedeas. This is not one of the three cases in which it is provided by statute that a supersedeas must be granted as a matter of right. It is a case in which the granting of the supersedeas is within the sound discretion of this Court.

This Court believes that this case is governed by the opinion of the United States Court of Appeals for the Sixth Circuit in the case styled Avco Corp. v. Aero Lodge No. 735, International Association of Machinists, and Aero Space Workers, et al., decided May 2, 1967. In that case Avco had a collective bargaining agreement with the union covering approximately 2,000 production and maintenance employees of Avco's plant in Nashville, Tennessee. The collective bargaining agreement then in force provided that there would be no work stoppages or strikes. A strike occurred at the plant even though the collective bargaining agreement contained a "no strike" clause, as does this agreement with Masonite. Avco instituted a suit in the Chancery Court of Tennessee seeking to enjoin the union from striking. The Chancery Court issued a temporary injunction against the strike and thereafter the union removed the case to the Federal District Court. The Federal Court dissolved and set aside the state court injunction and refused to remand the case to the state court for the reinstatement of the injunction. Avco contended, as does Masonite Corporation, that its action was founded on a breach of contract arising under state law but the federal court did not agree.

On appeal to the United States Court of Appeals, the Appeals Court found that the action of the Federal District Court in dissolving the state court granted injunction was correct, and that the state courts, under the rules of the United States Supreme Court, are required to apply federal law and not state law. I quote the opinion as follows:

> "Had action remained in the state court, the state court, under the doctrine of Lincoln Mills and Lucas Flour, was bound to apply federal and not state law."

The Court further found that the state courts do not have jurisdiction to issue injunctions in this particular type of case.

Again I quote from the language of the Court of Appeals as follows:

> "Though Section 4 specifically applies to federal courts, there was, nevertheless, a clear declaration of congressional policy against enjoining peaceful picketing, which we must now follow and apply as a part of federal labor law. . . .
>
> "If remand is granted state courts would become the preferred forum for adjusting breaches of 'no strike' clauses in collective bargaining agreement in industries affecting interstate commerce. Not only would this undermine a uniform development of the law, but the availabilities and effectiveness of the injunctive remedy would vary from state to state. Consequently, in order to achieve this uniformity of application, the remedies available in state courts are limited to the remedies available under federal law.
>
> "Aveo's claim arises under the law of the United States, and the complainant states an action over which the District Court had original jurisdiction. Federal labor policy must have uniform application.

The Congress has declared that injunctions shall not issue to restrain peaceful picketing."

While this Court realized that there is some dispute in other states as to the applicability of this doctrine, this Court feels that where an identical situation has been presented to a United States Court of Appeals and it has decided no later than May 2 of this year that in its opinion the State court had no jurisdiction or power to grant these injunctions, that for this Court to so do in fact of its own previous opinions and in face of this recent opinion of the United States Court of Appeals would be an abuse of discretion by this Court.

The opinion of the Mississippi State Supreme Court was an advisory opinion only. Since the Court did not attempt to discuss the applicable federal law nor was the question of whether or not a supersedeas should be granted then pending before the Mississippi State Supreme Court, the sole question in that case is whether the State Supreme Court had jurisdiction to entertain an original suit for an injunction, which the Court said that it did not. Any other findings by the Court would necessarily be dictum, since the question of the writ of supersedeas had not then been raised nor had any application even been made to any court for a writ of supersedeas.

For the reasons stated above, this Court believes that this case is controlled by the decision of the United States Court of Appeals for the Sixth Circuit, which is the most recent case decided by a higher court on this subject. To hold otherwise would mean that the federal substantive law is different in the State of Tennessee than it is in the State of Mississippi, and would defeat the uniform application of federal labor law.

The writ of supersedeas will be denied.

APPENDIX D

IN THE SUPREME COURT OF MISSISSIPPI

Misc. No. 35

MASONITE CORPORATION

v.

INTERNATIONAL WOODWORKERS OF AMERICA, ET AL.

July 10, 1957

Suggestion of Error Overruled July 21, 1967

GILLESPIE, *Presiding Justice*:

Masonite Corporation filed in this Court a bill or application for an injunction against International Woodworkers of America, AFL-CIO, the local union, and certain officers thereof, requesting this Court to order the issuance of a temporary writ of injunction pending an appeal to this Court. The applicant will be referred to as Masonite and defendants collectively as Union.

Masonite operates a manufacturing plant in Laurel, Jones County, and the local union represents Masonite's production and maintenance employees under a collective bargaining agreement. Said employees went on strike and Masonite filed in the Chancery Court of Jones County a bill for injunction. Union was enjoined from committing acts of violence in connection with picketing, and this injunction is still in force. Thereafter Masonite filed another bill for injunction, and on the fiat of a Justice of this Court a temporary injunction was issued prohibiting Union from engaging in a strike or other work stoppage. After Union answered the bill and Masonite moved to make the injunction permanent, a hearing was had and the chancellor dismissed the bill. Masonite appealed and

forthwith filed in this Court an application for a temporary injunction against Union prohibiting a strike or other work stoppage pending disposition of the appeal. Filed with the application were copies of various pleadings and proceedings in the trial court. Notice was duly given of Masonite's application for temporary injunction and the matter was set by special order and all parties have filed briefs. Union demurred and answered, and requests that the application be dismissed.

Upon consideration of all aspects of the proceedings we are of the opinion that the temporary injunction which was in force until Masonite's bill of complaint was dismissed, and which injunction was necessarily dissolved by said dismissal, should be kept in force until this Court decides the appeal on its merits. For reasons next to be stated, we are of the opinion that the proper procedure to keep the temporary injunction in force pending appeal is by a writ of supersedeas.

Masonite did not request of the chancellor an appeal with supersedeas, and it is apparent from the briefs that all parties to this litigation believe that supersedeas will not lie to keep in force pending appeal a temporary injunction which the decree appealed from dissolved. This probably is a result of a misunderstanding of the opinion of this Court in Mississippi Power & Light Company v. Town of Coldwater, 234 Miss. 615, 99 So.2d 443, 106 So.2d 375, 712 So.2d 222 (1958), wherein this Court held that supersedeas would not afford affirmative injunctive relief denied by the trial court. In that case there was no temporary writ of injunction before the Court, and while the Court said that it appeared one had been issued, its terms were unknown. The Court stated that the decree appealed from did not change the status quo of the subject of the litigation and that supersedeas would serve no purpose. The Court did not consider whether a writ

of supersedeas would keep in force a temporary injunction dissolved by the decree from which the appeal was prosecuted. In the present matter the decree appealed from did change the status quo of the litigation by dissolving the temporary injunction.

The rule is that when there is an appeal with supersedeas from a decree dissolving a temporary injunction, the supersedeas operates to keep in force the temporary injunction pending disposition of the appeal. McCandless v. State, 167 Miss. 539, 142 So. 490 (1932); Kimball, Raymond & Company v. Alcorn & Fisher, 45 Miss. 145 (1871); Penrice v. Wallis, 37 Miss. 172 (1859). In Griffith, Mississippi Chancery Practice 457 (2d ed. 1950), the rule is stated as follows: "And if the order of dissolution be appealed *with supersedeas,* this operates to keep the injunction in force, and it is not proper for the chancellor to make an order allowing the defendant in the meantime to do the thing prohibited." In the preliminary stages of the appeal in the case of Simpson v. City of Gulfport, 239 Miss. 136, 121 So.2d 409 (1960), this Court sitting en banc considered a motion that raised the question of whether a writ of supersedeas in an appeal from a decree sustaining a demurrer to a bill of complaint and dissolving a temporary injunction kept in force the temporary injunction pending appeal. This Court held that the supersedeas operated to keep in force the temporary injunction until disposition of the appeal. No opinion was written and the order on the motion was not reported.

We hold that the proper procedure for Masonite to follow is to apply to the chancellor for a writ of supersedeas; and the chancellor should fix the amount of the penalty of the supersedeas bond and order the writ issued. This Court or any Justice has the authority to issue the writ of supersedeas, but not before application has been made to the chancellor. Rule 32, Rules of the Supreme

Court of Mississippi. Since supersedeas is the appropriate procedure in this case, it is unnecessary to consider when and under what circumstances a litigant is entitled to injunctive relief from this Court in aid of this Court's appellate jurisdiction.

The application for injunction is dismissed without prejudice and Masonite is granted leave to apply to the chancellor for a writ of supersedeas so as to maintain in force the temporary injunction pending appeal to this Court, upon Masonite entering into a proper supersedeas bond in an amount to be fixed by the chancellor.

Bill for injunction dismissed without prejudice to Masonite to apply to the Chancellor for an appeal with supersedeas so as to maintain in force the temporary injunction involved in this case pending appeal to this Court on giving a bond as fixed by the Chancellor.

ALL JUSTICES CONCUR.

APPENDIX E

IN THE SUPREME COURT OF MISSISSIPPI

No. 44,827

MASONITE CORPORATION

v.

INTERNATIONAL WOODWORKERS OF AMERICA, ET AL.

December 11, 1967

Suggestion of Error Overruled January 29, 1968

ETHRIDGE, *Chief Justice*:

This is an appeal by Masonite Corporation, complainant, from a decree of the Chancery Court for the Second Judicial District of Jones County, Mississippi, dismissing after a hearing Masonite's petition to find appellees in contempt of court. They were charged with violation of a temporary injunction, which restrained them from engaging in a strike at Masonite's plant in Laurel, inducing or causing complainant's employees to strike, and picketing the plant. The temporary injunction was based upon a no-strike or interruption of work clause in the collective bargaining agreement between Masonite and the unions.

The defendants-appellees are International Woodworkers of America, AFL-CIO (called International), its Local 5-443 (called Local), and five officers and agents who signed the contract—J. D. Jolley, Chester Ishee, John A. West, Ben Johnson, and Thomas E. Lindsey. The seven parties were all of the defendants to the original bill for injunction, and will sometimes be referred to as the "original defendants" or "original appellees." Also made defendants to the contempt petition were about fifty individuals who were officers, shop committeemen,

negotiating committeemen, and shop stewards of the Local.

We hold (1) that Masonite cannot appeal from the acquittal of appellees on criminal contempt charges, but that it has the right to appeal from that part of the decree dismissing civil contempt charges. It sought a coercive decree to enforce compliance with the injunction. (2) The clear and convincing evidence shows that the original appellees wilfully and contumaciously violated the temporary injunction, and the chancery court was manifestly wrong in holding otherwise. (3) The appeal as to criminal contempt is dismissed. The decree of the chancery court is affirmed in part, as to the fifty additional appellees. As to the International, the Local, and the five signatory officers, it is reversed and judgment is rendered here holding them guilty of civil contempt of court. The case is remanded to the chancery court for enforcement of this judgment, and for any further, additional proceedings consistent therewith.

I. BACKGROUND AND ISSUES

Masonite Corporation operates in the City of Laurel, Jones County, Mississippi, a large manufacturing plant producing finished wood products. On March 3, 1967, the International Woodworkers of America, AFL-CIO, acting for itself and its local union 5-443, executed a collective bargaining agreement with Masonite. All of the 2,050 hourly bargaining unit employees of Masonite on April 21, 1967, were members of the union. On that date the International and the Local unions, acting through their officers and agents, called a strike at Masonite's Laurel plant. All 2,050 members of the union walked out, and the union began picketing the plant.

Article 26 of the contract provides for a detailed five-step adjustment procedure and for arbitration. Article

23 is an "interruption of work" or "no-strike" clause. It provides:

> *Section 1.* At no time during the full term of this Agreement, shall the Union or any of its members authorize or engage in any strike, walkout or other type of work stoppage. At no time, during such terms, shall the Employer lockout any of its employees.
>
> *Section 2.* In the event any violation of the previous Section occurs, which is unauthorized by the Union, there shall be no liability on the part of the Union or any of its Officers or Agents, provided that in the event of such unauthorized action, the Union first meets the following conditions:
>
> (a) The Union shall publicly declare in a newspaper having general distribution and publication in Laurel, Mississippi, that such action is unauthorized;
>
> (b) The Union shall, within twenty-four (24) hours, promptly order all its members in the employ of the Employer to return to work in the plant of the Employer.
>
> *Section 3.* Any employee who participates in any strike, walkout, or other type of work stoppage as specified in Section 1 of this Article, may be discharged, without right of appeal, by the Employer at its sole discretion.

On May 1, 1967, Masonite filed in the chancery court a bill for injunction against the International, Local 5-443, and J. D. Jolley, Chester Ishee, John A. West, Ben Johnson, and Thomas E. Lindsey, officers and agents of the Local and for the International and signatories to the collective bargaining agreement. The bill charged that defendants had actively participated in the breach of the

collective bargaining agreement, in violation of the no-strike clause; that on April 21, 1967, defendant unions, acting through their agents, called the employees represented by them out on strike, and posted pickets at the entrance to complainant's plant in Laurel, with notices that the defendant unions were on strike. The strike and picketing had brought complainant's operations to a stand-still, and had thrown thousands of employees out of work. Defendants by calling the strike had violated their contract. The bill further charged that complainant had called upon defendants to terminate the illegal strike, to order their members to return to work, and to process any complaints or grievances through the orderly processes provided by the contract, but that defendants had refused to do so, and the strike continued pursuant to their authorization and under their direction. The strike and picketing were causing complainant and its employees irreparable injury and damages, for which they had no adequate remedy at law. As a result, complainant suffered and would continue to suffer substantial monetary losses, unless defendants were enjoined from engaging in the unlawful strike and picketing.

Thus the bill averred that complainant was entitled to an injunction enjoining and restraining defendants from striking, and causing complainant's employees to strike and picket, and interfering with the normal conduct of complainant's business. Hence the bill prayed that the defendants be temporarily and permanently enjoined from such actions in violation of the contract, and that the injunction direct the unions and their officers to take certain affirmative steps in implementation of the relief sought. The bill also asked for general relief.

The injunction in question was issued pursuant to a fiat executed by a Supreme Court Justice on May 1, 1967. The fiat was returnable to the Chancery Court for the Second

Judicial District of Jones County. The required $5,000 bond was filed by appellant and approved by the clerk. On May 2, the writ of injunction was served on all of the original defendants and was posted at two public places in the City of Laurel (the courthouse and the union house), as well as at Masonite's main-gate entrance to its plant, and at seven other gates and locations around the plant.

The writ of injunction is in substantially the terms of the prayer of the bill of complaint. It provides:

> NOW THEREFORE, you, as defendants, and each of you and your officers, agents, representatives, employees and members and all other persons acting in concert with you or under your control, influence, persuasion or inducement be and you are hereby restrained and enjoined from engaging in a strike at complainant's plant in Laurel, Mississippi, and from inducing or causing complainant's employees to strike at complainant's plant in Laurel, Mississippi, and from engaging in picketing of complainant's plant in Laurel, Mississippi.
>
> YOU ARE FURTHER ORDERED TO TAKE THE FOLLOWING AFFIRMATIVE ACTION FORTHWITH: To advise all of your officers, agents and employees, and all other persons acting in concert with them of the contents of this injunction, and to inform them that the work stoppage at complainant's plant at Laurel, Mississippi has been ended, and to direct each of your officers, agents, representatives and members employed by complainant at its mill in Laurel, Mississippi immediately to cease participating in the work stoppage and to advise them to return to work at their next scheduled working time.
>
> You will comply with this writ of injunction until further order of this court upon penalty of contempt.

On May 4, 1967, Masonite, acting through R. E. Paul, its general manager, filed a charge or petition for citation of contempt against the defendants to the injunction suit, the International, the Local, the five signatories to the collective bargaining agreement, and about eighty individual defendants. Approximately thirty of the latter were not served with process, and complainant took a nonsuit as to them. The petition for contempt outlined the above stated facts, and charged that the injunction had been disobeyed by the defendants and the officers, agents, representatives, employees and members of the defendant unions, and other persons acting in concert with or under their control, influence, persuasion or inducement, as set forth in nine charges of contempt of court. Charges numbers 7 and 8 concern three individuals, and appellant concedes that no evidence was introduced as to those charges. Charges numbers 1 through 5 were as follows:

> (1) The defendants and each of them have failed and refused to direct each of the officers, agents, representatives and members employed by complainant at its mill in Laurel, Mississippi, immediately to cease participating in the work stoppage.
>
> (2) The defendants and each of them have failed and refused to advise each of the officers, agents, representatives and members employed by complainant at its mill in Laurel, Mississippi, to return to work at their next scheduled working time.
>
> (3) The defendants and each of them have continued to engage in a strike at complainant's plant in Laurel, Mississippi.
>
> (4) The defendants and each of them have continued to engage in picketing of complainant's plant in Laurel, Mississippi, although they did cause "on

strike'' signs to be removed from the vicinity of the said premises.

(5) The defendants and each of them have induced and caused complainant's employees to continue on strike at complainant's plant in Laurel, Mississippi.

Charge number 6 pertained to approximately fifty individuals named in an attached exhibit. It averred that they were officers, shop committeemen, negotiating committeemen, or shop stewards duly selected by the defendant unions to represent the employees of complainant; that they had notice of the terms of the writ of injunction, and none had returned to work or offered to return to work; that each of them was continuing to engage in a strike, and was causing or inducing employees to strike.

The remaining Charge number 9 averred that on May 3, 1967, certain persons, including employees of complainant who were also employees and agents of the defendant unions, engaged in a strike near the complainant's plant by standing, sitting, or lying on the railroad tracks in the immediate vicinity of complainant's property for the purpose of blocking the movement of a railroad engine removing carloads of hardboard from complainant's property, in violation of the injunction.

The petition for contempt charged that all of the above acts of disobedience to the injunction were done knowingly, wilfully, and contumaciously by defendants and the other individuals, and that they constituted wilful contempt of the court's order. The petition then prayed for a coercive decree for future compliance with the injunction, and for an order for defendants to show cause why they should not be punished for contempt. It stated:

> Affiant further alleges on information and belief that such acts of disobedience will continue unless the court coerces compliance with the Writ by a decree nisi conditioned upon compliance therewith.

WHEREFORE, an order is prayed for by the complainant against the defendants and the other named individuals them to appear and answer why they should not be punished jointly and severally for contempt of the Writ of Injunction of this court. Complainant further prays for a decree nisi against said defendants and the other named individuals conditioned upon compliance with the Writ of Injunction. Complainant prays for general relief.

International filed a separate answer, which stated that immediately upon learning that its members employed by complainant were on strike, it telegraphed J. D. Jolley, president of the Local, instructing him and all other officers and members of the Local to comply with Article 23. It attached a copy of a telegram, with its date not apparent, to that effect. However, International did not introduce in evidence any such telegram, or offer any evidence at the trial. Its answer merely denied that it had committed or sanctioned any of the acts charged. The Local union filed an answer which denied that its members were on strike at Masonite. It averred that on May 2, in compliance with the injunction, it had informed all of its members that the strike was ended and that they should return to work in the plant. Local offered no evidence to support these claims. The five named defendants in an answer denied they had violated the injunction. They asserted that they had obeyed it, and had caused all picketing to cease. They offered no evidence.

The chancery court entered an order to the defendants to appear and answer the charges of contempt, and to show cause why they should not be punished for contempt.

In the trial of this case on May 18 and 19, complainant offered nineteen witnesses, and rested. Defendant made a motion to exclude and enter judgment of acquittal. The

chancellor sustained the motion to exclude the evidence as to Charges 1, 2, 8, and 9. He overruled the motion as to Charges 3, 4, 5, and 6. Defendants then rested without offering any evidence.

The chancery court stated that the only issue was whether the injunction had been disobeyed. It recognized that there was involved both "a criminal contempt and a civil contempt charge." The evidence showed that, with the exception of two men, none of the members of the union had returned to work since the injunction was issued. There was no evidence in the record, the court stated, to explain why they had not returned. It found that the evidence showed that union-member employees of Masonite had parked in areas around each of the gates of the Masonite plant in unmarked cars, but not upon Masonite property; and that none of these people had made any attempt to interfere with anyone entering or leaving the plant. The effect of the failure of 2,000 people to return to work, the trial court thought, "should not be and is not taken into consideration by this court in determining whether or not this court finds the defendants have been guilty of violation of the mandate of the injunction." The only issue was whether complainants proved "beyond a reasonable doubt" that defendants and each of them were guilty of violating the injunction. The trial court held that "the proof is not sufficient and the bill of complaint will be dismissed." Hence the final decree held that "Masonite has not sustained the burden of proof and that the charge of contempt should be, and is hereby, dismissed finally, at the cost of complainant."

Subsequently, Masonite's original bill for injunction, pending appeal, was filed in this Court and was denied. It was held that the appropriate remedy was by supersedeas, application for which must be filed originally in the trial court; and that, when there is an appeal with

supersedeas from a decree dissolving a temporary injunction, the supersedeas operates to keep in force the temporary injunction pending disposition of the appeal. Masonite Corp. v. International Woodworkers of America, 202 So.2d 41 (Miss. 1967). Thereafter, the chancellor denied supersedeas, and a Judge of this Court granted it, requiring a $25,000 bond (which was made) and directing that "the temporary injunction heretofore issued in this cause shall remain in full force and effect pending appeal to the Supreme Court of Mississippi."

II. RIGHT OF PLAINTIFF TO APPEAL CIVIL BUT NOT CRIMINAL CONTEMPT

Appellees have filed a motion to dismiss this appeal, because, they assert, there is no statutory authority for an appeal from an acquittal of contempt, and hence this court has no jurisdiction. They make the same point in their brief on the merits.

This question turns on the fact that in the present case there is involved both criminal and civil contempt. The former is not appealable by a plaintiff, while the latter is appealable by either party.

At common law, no appeal or writ of error lay from a judgment of a trial court in a contempt action. Each court was the sole and exclusive judge of contempts against its authority. Hence there was no right to appeal from a conviction of contempt. Watson v. Williams, 36 Miss. 331 (1858).

The Code of 1880 first provided for appeals from judgments convicting a person of contempt of court. It is now Mississippi Code 1942 Annotated section 1152 (1956). It provides that a person ordered by any tribunal to be punished for contempt may appeal and may supersede any fine imposed by a bond not exceeding $300. Appellant shall be entitled to bail, with an appearance bond of

$300, "and on such appeal the question shall be whether the appellant was guilty of contempt." The Supreme Court may affirm, reverse, or modify the judgment, "according to the judgment of the appellate court."

There does not appear to be any other statute authorizing an appeal from a conviction of criminal contempt. State v. Wingo, 221 Miss. 542, 73 So.2d 107 (1954), involved a conviction of Wingo, an attorney, for criminal contempt for filing an allegedly contemptuous motion for a county judge to recuse himself. He appealed, and the circuit court set aside that judgment. From that order of the circuit court, the State undertook to appeal under Code section 1153, which authorizes the State to appeal from a judgment acquitting a defendant where a question of law has been decided adversely to the State. This Court held that section 1153 authorizes an appeal by the State only where there is a question of law, and not a mixed question of law and fact. The Wingo contempt charge was for criminal contempt, and was governed by the rules applicable to criminal cases. The judgment was based upon a mixed question of law and fact, and thus the State was without right to prosecute the appeal. The motion to dismiss the appeal was sustained.

In Bryant v. Associates Discount Corporation, 251 Miss. 1, 167 So.2d 657 (1964), Bryant was convicted of civil contempt of court, and it was held that section 1152 authorized his appeal from a conviction of civil contempt. The statute was designed to protect a person convicted of any kind of contempt, civil or criminal.

Apparently no other statute authorizes appeal from an order concerning criminal contempt. Hence, insofar as the decree of the chancery court acquitted appellees of criminal contempt, for past offenses (violations of the injunction prior to the hearing of the charges), the appeal of Masonite is not properly taken, and to that extent it should be and is dismissed.

However, the civil contempt charges are in a different posture. The plaintiff in a civil contempt proceeding has a right to appeal under the provisions of the general statute pertaining to appeals in civil cases. Mississippi Code 1942 Annotated section 1147 (1956) provides that an appeal may be taken to the Supreme Court "from any final decree of the chancery court," by any of the parties or legal representatives of such parties. A civil contempt proceeding is "instituted to preserve and enforce the rights of private parties to suits." Griffith, Mississippi Chancery Practice, § 666 (2d ed.1950) See also Id. §§ 664-70. In short, that part of the decree pertaining to charges of civil contempt of court is appealable by the Complainant.

This right of a plaintiff to appeal from the judgment of a court in a civil contempt proceeding dismissing the charges is in accord with the weight of authority and the better reasoned cases. Generally, the determining factor as to whether a contempt is to be classified as civil or criminal is the purpose for which the power is exercised. State v. Wingo, 221 Miss. 542, 547, 73 So.2d 107, 109 (1954); 17 Am.Jur.2d Contempt § 4 (1964); 17 C.J.S. Contempt § 5(2) (1963).

Code section 1278 gives the chancery court or chancellor the power to punish a person for breach of injunction, by fine or imprisonment. Code section 1656 provides that the Supreme, circuit, chancery, and county courts have the power to fine or imprison a person refusing to obey any order or judgment of the court, "until the rule, order, or judgment shall be complied with."

Griffith, Mississippi Chancery Practice, section 666 (2d ed.1950), discussing these sections, says:

> It will be seen that these statutes have evident reference to two classes of contempts, and these classes

> are: (1) Those prosecuted to preserve the power and vindicate the dignity of the court, and to punish for disobedience of its orders; and (2) those instituted to preserve and enforce the rights of private parties to suits. In the first the punishment is for a past offense and must be suffered; in the second the contemnor can discharge himself by paying the costs and expenses and doing what he had previously refused to do. Approximately these two classes are distinguished as criminal and civil, but the same act which constitutes a civil contempt may be also of the other class and vice versa. * * *
>
> The power of the court to imprison in a civil contempt in order to coerce the performance of a decree is without limit because, as already said, the contemnor himself may end the sentence by performing the decree or by declaring his willingness to perform it,—and being released he proceeds so to do with costs, if within his power.

Both the bill of complaint and the petition for contempt reflect that these proceedings were instituted primarily to preserve and enforce the rights of the private parties to the suit, namely, the contract rights of Masonite with the defendants. The prayer of the bill shows this primary purpose. See Goldfarb, The Contempt Power 49-67 (1963). The test is, what is the primary purpose of the suit? If it is for preserving and enforcing the rights of private litigants, as here, the contempt is civil. Hanna v. State ex rel. Rice, 169 Miss. 314, 324, 153 So. 371, 374 (1934); Ramsay v. Ramsay, 125 Miss. 715, 716, 88 So. 280, 281 (1921); Boylan v. Detrio, 187 F.2d 375, 378 (5th Cir. 1951); International Minerals & Chem. Corp. v. Local 177, United Stone & Allied Prod. Workers, 74 N.M. 195, 392 P.2d 343 (1964); Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, 392 Pa. 500, 140 A.2d 814 (1958). The landmark labor contempt case of

Gompers v. Buck's Stove & Range Company, 221 U.S. 418, 31 S.Ct. 492, 55 L.Ed. 797 (1911), discusses in detail the appropriate criteria for distinguishing between civil and criminal contempt. See generally Muskovitz, Contempt of Injunctions, Civil and Criminal, 43 Colum.L.Rev. 780 (1943).

In the instant case, Charges 1 through 6, with the prayer for coercive relief, involved principally charges of civil contempt of court. They were and are appealable by Masonite.

Apparently Wood v. Ratliff, 138 Miss. 783, 103 So. 356, (1925), is the only Mississippi case relevant to the right of an aggrieved plaintiff in a civil contempt proceeding to appeal. The chancery court had declined to punish for civil contempt, but the Supreme Court entertained the appeal and reversed the lower court's decree, stating "the civil rights of the property holder * * * should be protected by the court * * *." Id. at 786, 103 So. at 356.

In Lamb v. Cramer, 285 U.S. 217, 52 S.Ct. 315, 76 L.Ed. 715 (1932), a case which arose in Mississippi, the United States Supreme Court held that an order dismissing civil contempt charges was appealable. Two Kansas cases are analogous to the case at bar. Smith v. Clothier, 113 Kan. 47, 213 P. 1071 (1923), held that an appeal can be taken from a judgment finding the defendant not guilty of civil contempt. Hendrix v. Consolidated Van Lines, 176 Kan. 101, 269 P.2d 435 (1954), while holding that there can be no appeal from a judgment of not guilty in a criminal contempt proceeding, discussed at length the appealability of a judgment finding that no civil contempt had been committed. The court stated that such appeals exist in civil contempt proceedings, based upon the general appeals statute of Kansas. This statute is substantially similar to Mississippi Code section 1147. Kansas also has a specific statute, as does Mississippi, authorizing appeals from convictions of contempt.

Vilter Manufacturing Company v. Humphrey, 132 Wis. 587, 112 N.W. 1095 (1907), upheld an appeal by a plaintiff employer from an order denying a motion to punish the defendant, a member of a labor union, for contempt of court in violating an injunction. The proceedings were civil and the appeal was entertained.

Gibson v. Rogers, 270 Ky. 159, 109 S.W. 2d 402 (1937), made this observation: "It would be a rare doctrine if a party could obtain an order from a court commanding or prohibiting the doing of a thing, and could go no further if the court should fail to compel obedience to the order." Id. at 162, 109 S.W.2d at 403. See also Stringfellow v. Haines, 309 F.2d 910 (2d Cir.1962); Mason v. Miracle, 297 Ky. 479, 180 S.W.2d 403 (1944); In Re Richardson, 31 N.J. 391, 157 A.2d 695 (1960); Department of Health v. Roselle, 61 N.J.Super. 363, 160 A.2d 864 (Super.Ct.1960), rev'd on other grounds, 34 N.J. 331, 169 A.2d 153 (1961); Wellman Eng'r Co. v. Caldon Automation, Inc., 2 Ohio App.2d 385, 209 N.E.2d 172 (Ct.App.1965).

In summary, insofar as the decree of the chancery court acquitted appellees of past offenses, and declined to punish them in criminal contempt for disobedience of its order prior to the hearing, Masonite has no right of appeal. However, it can appeal under Code section 1147 from the holding of the chancery court that no civil contempt had been committed. The charges of civil contempt as set forth in Charges numbers 1 through 6 were, therefore, properly appealable to this Court, and now present issues appropriate for decision. Charge number 9 involves criminal contempt, and the appeal as to it is dismissed.

III. THE FACTS AND CIVIL CONTEMPT

In cases of criminal contempt, involving punishment for past disobedience of the court's orders, proof of defendant's guilt beyond a reasonable doubt is required. Johnson

v. State, 254 Miss. 30, 179 So.2d 838 (1965); Jenkins v. State, 242 Miss. 627, 136 So.2d 205 (1962); Tillery v. Vines, 241 Miss. 349, 131 So.2d 191 (1961). On the other hand, a civil contempt proceeding is instituted to preserve and enforce the rights of private parties to suits. Although the authorities are not wholly in acord, we think that in civil contempt cases the weight and sufficiency of the evidence must be clear and convincing, as in a claim of fraud, and not beyond a reasonable doubt, as required in criminal cases. See Oriel v. Russell, 278 U.S. 358, 49 S.Ct. 173, 73 L.Ed. 419 (1929); 17 Am.Jur.2d Contempt § 98 (1964); 17 C.J.S. Contempt § 84(4), at 221 (1963); Goldfarb, The Contempt Power 251 (1963); Griffith, Mississippi Chancery Practice §§ 589, 666 (2d ed.1950); Muskovitz, Contempt of Injunctions, Civil and Criminal, 48 Colum.L.Rev. 780, 818—19 (1943).

Although the chancery court recognized that this case involved both civil and criminal contempt, it erred in requring appellant to prove civil contempt beyond a reasonable doubt. In the civil aspects of this proceeding, appellant's duty was to prove by clear and convincing evidence that the original defendants had violated the injunction. After careful study of this record, we are convinced that the chancery court was manifestly wrong in finding that the original defendants were not guilty of civil contempt of court. The clear and convincing evidence shows that they wilfully and contumaciously violated the temporary injunction and were in civil contempt of court.

Of course, the individual members of the unions cannot be ordered to work for Masonite or anyone else. The International and Local unions, and their officers and representatives, were simply enjoined by the temporary injunction, in accord with their contract with Masonite, from engaging in a strike, inducing or causing employees to strike, and from engaging in picketing.

On April 21, 1967, all of appellant's production and maintenance hourly employees, totalling 2,050 people, were members of the appellee unions. On that day all of these employees went out of the Laurel plant on strike. As of May 18 and 19, only four of these employees had returned to work, and of these four, two had returned for a few hours only.

At the trial, Masonite offered nineteen witnesses, consisting of representatives of the news media in the area, a number of plant guards, its director of employee relations, and its safety inspector. Defendants rested without offering any witnesses.

As to the picketing, before the service of the injunction on May 2, the seven entrances to Masonite's plant were picketed by members of the union bearing signs. After service of the writ, the pickets moved across the street from the seven entrances and the signs disappeared. However, down to and including the dates of the hearings on May 18 and 19, these silent pickets, without signs, most of whom were identified as union members, maintained a constant surveillance at all entrances of the plant. They generally operated, both day and night, with two men in each automobile in four-hour shifts, and were relieved in a systematic and methodical manner. Officers of the union visited the pickets who were stationed from May 2 to May 19 within 60 to 75 feet of the back gate, and within 100 feet of the front gate. During that period only four hourly employees entered the plant, and only two remained for over a few hours. According to one guard for the plant, one truck entered the plant during this period. Another guard stated that during that time none had entered.

Representatives of all news media in the Laurel area (a newspaper and radio and television stations) testified that they made no announcements for the unions on May 2 and thereafter, except for the bare announcement of meetings

called by the unions for that day; and that during the same period they published numerous notices, paid for by appellant, notifying employees of the times they should report for work in keeping with the injunction.

The record before the Court clearly and convincingly establishes that the original defendants violated the injunction during the period in question. They were enjoined from engaging in a strike at the plant in violation of the contract, from inducing or causing employees to strike, and from engaging in picketing. The International and Local, acting through their officers and representatives, were functioning as unions. On April 21, 2,050 of the appellant's employees walked out of the plant on strike. It is apparent that all 2,050 of these men did not refuse to return to work after May 2 without organization, leadership, and discipline from the unions. The unanimity of the earlier walkout and this later non-action of 2,050 men spells organization and leadership.

Somewhat similar to this situation is the sequel to United States v. United Mine Workers, 330 U.S. 258, 67 S.Ct. 677, 91 L.Ed. 884 (1947), in which the government as operator of the coal mines obtained a preliminary injunction, the union went on strike, and the union and its president were found guilty of both civil and criminal contempt. Subsequently the United Mine Workers again went on strike in defiance of a temporary restraining order of the district court, contending that the miners had left the mine of their own volition and without any instructions from the president of the union. Judge Goldsborough, rejecting this defense in United States v. International Union, United Mine Workers, 77 F.Supp. 563 (D.D.C.1948), stated:

> But the defendants' contention is this: That the First and the Thirteenth Amendments were violated because, as a matter of fact, no strike was called, no strike existed. These men, it is contended, did, as in-

dividuals, what they had a right to do, work or not to work, and they decided not to work.

Now, we have to consider the validity of that claim objectively. If a nod or a wink or a code was used in place of the word "strike," there was just as much a strike called as if the word "strike" had been used.

* * *

* * * * * * * *

Does that constitute a nod, or a wink, or the use of a code in order to call a strike? Is there any other reasonable interpretation?

And then this Court believes that there is a principle of law which, as far as I know, no Court has ever been called upon to announce, because this use of a code in order for a union to avoid responsibility is a new thing. It is a new method of endeavoring to avoid responsibility. The Court thinks the principle is this: that as long as a union is functioning as a union it must be held responsible for the mass action of its members. It is perfectly obvious not only in objective reasoning but because of experience that men don't act collectively without leadership. The idea of suggesting that from 350,000 to 450,000 men would all get the same idea at once, independently of leadership, and walk out of the mines, is of course simply ridiculous.

* * * [A] union that is functioning must be held responsible for the mass action of its members. (Id. at 566-567)

The parallel here is manifest. It is incredible to think that 2,050 men would stay out on strike, after the injunction was served on the union and its officers, of their individual volition, without leadership from the unions. Moreover, the unions' connection with the strike between May 2 and May 19 is amply reflected in the evidence, and not only by necessary inference. After May 2 the

pickets around the plant simply took down their signs and moved across the street in automobiles. They maintained a silent surveillance and picketing of the plant, operating in four-hour shifts. These silent pickets were visited from time to time by officers of the union. Human experience teaches that it is highly improbable that over 2,050 union men would coincidentally decide, each for himself and without direction from his union, to stay on strike after the service of the injunction based upon the contract with the union. Moreover, the fact of a mass absention from work, in the absence of adequate evidence to demonstrate the contrary, and there is none, is in itself sufficient to support the necessary inference that the continuance of the work stoppage was the result of concerted action by the unions aimed at a common objective.

The chancery court found that individual members and employees of Masonite had parked in unmarked cars around each of the plant gates. However, it erred in not attaching considerable evidentiary value to that fact, and also erred in stating that the failure of the 2,050 men to return to work should not be considered in determining whether the original defendants were guilty of violation of the injunction.

A picket need not carry a sign, nor need he undertake to use threats or force to prevent entry to the plant. The constant surveillance of the plant at all gates by the silent pickets, day and night, rain or shine, generally in four-hour shifts, unquestionably constituted picketing in violation of the injunction. NLRB v. United Furniture Workers, 337 F.2d 936 (2d Cir.1964); NLRB v. Local 182, International Brotherhood of Teamsters, etc., 314 F.2d 53 (2d Cir.1962); Ex Parte Textile Workers Union of America, 264 Ala. 656, 89 So.2d 92 (1956); Note, Picketing By An Uncertified Union; The New Section 8(b)(7), 68 Yale L.J. 1393, 1397-98 (1960).

As to the five officers of the union, who were signatories to the collective bargaining contract, they averred in their answer that they had advised the strikers to return to work, yet they did not testify on this or any other issue. As responsible officers and leaders, they also were under a duty to obey the injunction and to advise the strikers to return to work. Yet the strike and picketing continued. Their failure to exculpate themselves, combined with the evidence and entire context of the facts, supports an inescapable inference that they also participated in violating the injunction and were, therefore, guilty of civil contempt.

In addition to the foregoing facts and considerations, there is in this case another significant factor. Masonite introduced into evidence the writ of injunction, and offered numerous witnesses to support its charge that the original defendants had failed to obey the injunction and were in civil contempt. Appellees offered no proof to rebut this evidence. It is the general rule that introduction of a decree ordering alimony or child support payments, with proof of defendant's failure to make the payments, is sufficient to make out a prima facie case of civil contempt. Lewis v. Lewis, 213 Miss. 434, 57 So.2d 163 (1952); Vogel v. Vogel, 200 Miss. 576, 28 So.2d 217 (1946); Collins v. Collins, 171 Miss. 891, 158 So. 914 (1935); Annot., 53 A.L.R.2d 591, 618 (1957); Griffith, Mississippi Chancery Practice § 669 at 736 n. 82(b) (2d ed.1950). Parenthetically, in criminal contempt proceedings, a prima facie case is not made out by mere proof of defendant's failure to pay alimony as ordered, but it must also be shown that he was able to pay it. Evans v. Evans, 193 Miss. 468, 9 So.2d 641 (1942). On this appeal we are dealing with civil contempt. When the writ of injunction was introduced in evidence, and the evidence reflected that defendants had violated it, a prima facie case was made out. It then devolved on

defendants to purge themselves of civil contempt by proving that they had complied with the injunction. This they did not do. Ramsay v. Ramsay, 125 Miss. 185, 87 So. 491, 14 A.L.R. 712 (1921), suggestion of error sustained on other grounds, 125 Miss. 715, 88 So. 280, 14 A.L.R. 716 (1921).

Appellees assert, for the first time on this appeal, that the injunction upon which the contempt charges were based is void. It is argued that the state court had no jurisdiction to entertain the suit since by the Norris-LaGuardia and National Labor Relations Acts the Federal govenment preempted the field. We do not accede to this argument; however, the sole issue in this contempt proceeding was, as stated by the trial court, whether the defendants had violated the injunction. An injunction duly issuing out of a court of general jurisdiction with equity powers must be obeyed by the parties thereto, however erroneous the action of the court may be. The chancery court and a judge of this Court have general jurisdiction to issue injunctions in equity. Moreover, this contempt proceeding was not attacked in the trial court on the ground of Federal preemption. Appellees' counsel during the trial conceded in effect that the only question was "whether that injunction has been disobeyed."

The person who disobeys the order of a court of general jurisdiction does so at his peril. It is no answer that the order was improvidently or erroneously granted. Griffith, Mississippi Chancery Practice § 668 (2d ed. 1950). If a party could disobey a decree by a court of general jurisdiction, and defend on the ground that in his opinion the decree was erroneous, appellees would be constitutionally free to ignore all of the procedures of the law and respect for judicial process. Appellees could not bypass orderly judicial review of the injunction by disobeying it. Walker v. City of Birmingham, 388

U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967); Howat v. State of Kansas, 258 U.S. 181, 42 S.Ct. 277, 66 L.Ed. 550 (1922). Accordingly, on this appeal we do not reach or consider the issue of whether a state court may properly grant injunctive relief against a union's violation of a no-strike clause. Moreover, on the limited remand of this case, that will not be an issue for the chancery court in the enforcement of the judgment of this Court that the original appellees are in civil contempt of court for violation of the injunction.

The bill for injunction named as parties the International, the Local, and five individuals who were signatories to the collective bargaining agreement. The petition for contempt in Charge number 6 averred that approximately fifty additional named individuals "are officers, shop committeemen, negotiating committeemen, or shop stewards" of the local union; and that each of them had notice of the injunction, none had returned to work, and they were continuing to engage in a strike and inducing complainant's employees to strike. Appellant does not point out the places in this lengthy record wherein there is any testimony connecting these fifty additional defendants with civil contempt of the court. Appellant does not show that they were picketing the plant, but apparently relies simply on the fact that they have not returned to work. The evidence is insufficient to support a charge of civil contempt against them. The chancery court was warranted in dismissing the petition to that extent. Its decree is therefore affirmed in part, as to Charge number 6 of the petition for contempt and the fifty individual defendants named in its exhibit.

On the other hand, the chancery court was manifestly wrong in holding that the International, the Local, and the five individual defendants who were signatories to the collective bargaining agreement, were not in civil contempt of court. Accordingly, the decree holding otherwise

is reversed, and judgment is rendered here adjudicating that the International Woodworkers of America, AFL-CIO, and Local 5-443, International Woodworkers of America, AFL-CIO, and J. D. Jolley, Chester Ishee, John A. West, Ben Johnson, and Thomas E. Lindsey willfully and contumaciously violated the writ of injunction served upon them on May 2, 1967. The cause is remanded to the chancery court for the limited purpose of expeditious enforcement of this judgment and the injunction against these appellees by a coercive decree adequate for that purpose.

Appeal as to criminal contempt dismissed. As to civil contempt: affirmed in part as to fifty individual appellees named in charge 6; as to the International and Local unions, and J. D. Jolley, Chester Ishee, John A. West, Ben Johnson, and Thomas E. Lindsey, the decree is reversed, judgment rendered here for appellant, and cause remanded for limited purpose of enforcement of the judgment and the injunction.

ALL JUSTICES CONCUR.

APPENDIX F

U.S. CONST. art. I, § 8, cl. 3

(The Congress shall have power) . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

U.S. CONST. art. VI, § 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX G

EXCERPTS FROM NORRIS-LAGUARDIA ACT, 29 U.S.C. §§ 101-15

29 U.S.C. § 101. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

29 U.S.C. § 102. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representative of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

29 U.S.C. § 103. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, is declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

29 U.S.C. § 104. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of

any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

29 U.S.C. § 105. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title.

29 U.S.C. § 106. No officer or member of any association or organization, and no association or organization par-

ticipating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

29 U.S.C. § 107. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon

such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

29 U.S.C. § 108. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

29 U.S.C. § 109. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

APPENDIX H

EXCERPTS FROM NATIONAL LABOR RELATIONS ACT, 29 U.S.C. §§ 141-87.

29 U.S.C. § 157. Employees shall have the right to self-organization, to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

29 U.S.C. § 158(a)(1), (3), and (5). (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

. . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .

. . . .

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

29 U.S.C. § 163. Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way

the right to strike, or to affect the limitations or qualifications on that right.

29 U.S.C. § 185. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.